

Steven J. Moser (SM1133) MOSER LAW FIRM, P.C.
5 E. Main Street Huntington, NY 11743
631.824.0200
steven.moser@moserlawfirm.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS and ALONSO
VILLATORO, individually and on behalf of all others
similarly situated,

Plaintiffs,

- against -

KELCO CONSTRUCTION, INC., E.L.M. GENERAL
CONSTRUCTION CORP., JOHN KELLY and JOSEPH
PROVENZANO,

Defendants.

**CLASS AND
COLLECTIVE
ACTION
COMPLAINT**

Case No.

**JURY TRIAL
DEMANDED**

Carlos Alvarez Chicas and Alonso Villatoro (“Named Plaintiffs”), individually and on behalf of all others similarly situated, by the Moser Law Firm, P.C., hereby file this complaint against Kelco Construction, Inc., E.L.M. General Construction Corp., John Kelly and Joseph Provenzano (“Defendants”) and allege as follows:

INTRODUCTION

1. Kelco Construction, Inc. (“Kelco”) is the largest landscape installation and construction company in the New York metropolitan area. During the six year and 198 day period preceding the filing of this complaint and up to the present time (the “relevant time period”), Kelco has worked on numerous public projects, including the 9/11 Memorial and Museum, the LGBTQ Memorial Site, Central Park, The Brooklyn Bridge Park, and Hudson River Park. As of 2016 Kelco’s annual gross revenue was approximately \$40 million. Named Plaintiffs and those similarly situated (“Plaintiffs”) were laborers and

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56. Upon information and belief, Provenzano exercised sufficient operational control over ELM to be deemed the Plaintiffs' employer under the FLSA and the NYLL.

FACTS

PUBLIC WORK

57. Kelco entered into contracts for numerous public work projects to be performed during the relevant time period:

- A. The 9/11 Memorial and Museum,
- B. The LGBTQ Memorial Site,
- C. Central Park,
- D. Brooklyn Bridge Park,
- E. Hudson River Park,
- F. Queens Plaza Park,
- G. The Brooklyn Botanical Gardens, and
- H. Domino Park.

58. Upon information and belief, the aforementioned public works contracts, consistent with NYLL § 220, provided that that all laborers, workmen or mechanics performing work thereunder were entitled to (1) the prevailing rate of wages for each hour worked (2) time and a half for hours worked in excess of 8 hours each workday and (3) time and a half for hours worked in excess of 40 during any workweek.

CARLOS ALVAREZ CHICAS

59. Plaintiff Carlos Alvarez Chicas was employed by Kelco from approximately March 2017 until approximately March 2021.